IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1960 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUNVANTKUMAR P PATEL - Appellant(s)
Versus
VADILAL P PARIKH & 3 - Defendant(s)

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Appearance :
MR HH PARIKH for Appellant,
NOTICE SERVED for Respondent Nos.1,3 & 4.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/08/2007

ORAL JUDGMENT

1. Mr.H.H. Parikh, under authority of Mr.H.M. Parikh, learned counsel for the appellant. None for the respondent Nos.1, 3 and 4 though served. None for the respondent

No.2, though the name of Mr.P.F. Makwana, learned counsel is shown in the Daily Board.

2. The appellant – claimant, being aggrieved by the award dtd.8/9/1987 passed by the learned Motor Accident Claim Tribunal (Main), Kheda at Nadiad in Motor Accident Claim Petition No.780 of 1983, is before this Court with a submission that the learned tribunal was unjustified in exonerating the driver and owner of the truck and consequently, erred in exonerating the Insurance Company.

3. Mr.Parikh, learned counsel for the appellant submitted that from the Panchnama Exh.72 and the oral statements available on the records, it would clearly appear that the truck, in fact, dashed against the motorcycle, as a result of which, the motorcycle was thrown away and the claimant had suffered the injuries. He submitted that the tribunal was unjustified in dismissing the claim against the driver, owner and insurer of the truck.

4. From the panchnama Exh.72 it would only appear that motorcycle was on the left side of the road and the truck was also on the left of its side. It has come in the panchnama that after the dash probably the motorcycle was thrown in the opposite direction. Though it is

opinion evidence and is not binding upon any court, but assuming for a minute it is to be accepted, then, the evidence would only show that the motorcycle dashed against the tyre of the truck and thereafter, it was thrown on the other-side, this panchnama would not help the claimant.

5. From the oral evidence it does not appear that any of the witnesses has said that the truck was not on its left side. In fact, the driver was plying the truck on his left side, neither he was in the center of the road nor he had crossed central line, nor while driving he dashed the motorcyclist. In fact, one of the suggestion given was that the brake-wire of the motorcycle snapped, therefore, there was an accident. If this fact is accepted, then, again it will go against the case of the claimant, because after snapping of the brake-wire, the motorcycle would go out of control and may dash against something. In absence of some evidence to show that the driver of the truck was rash and negligent or he was the author of the accident, no liability of the driver or the owner of the truck, can be finalised, consequently, the Insurance Company would also not be liable to pay anything.

6. The tribunal after appreciating the evidence in its true

perspective, has recorded correct findings. Being in general agreement with the findings and for the reasons stated aforesaid, I hold that the tribunal was justified in dismissing the claimant's claim against the driver, owner and insurer of the truck.

7. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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